



Appeal Decisions

Hearing held on 6 February 2018

Site visit made on 6 February 2018

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2018

Appeal A Ref: APP/U1240/X/16/3152283

Land on the north side of Matchams Drive, Matchams Drive, Matchams, Hampshire BH24 2BU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [LDC].
 - The appeal is made by Little Paddocks Limited against the decision of East Dorset District Council.
 - The application Ref 3/16/0188/CLU, dated 19 February 2016, was refused by notice dated 13 April 2016.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is: "*Certificate of Lawful Existing Use for permanent residential use of 45 caravans*" [*my emphasis*]. Note: this description has been taken from the face of the Supporting Statement dated February 2016, given that the application form says in almost all relevant instances: "*See accompanying statement*".
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Appeal B Ref: APP/U1240/X/17/3179428

Land on the north side of Matchams Drive, Matchams Drive, Matchams, Hampshire BH24 2BU

- The appeal is made under section 195 of the Act against a failure to give notice within the prescribed period of a decision on an application for an LDC.
 - The appeal is made by Little Paddocks Limited against East Dorset District Council.
 - The application Ref 3/17/0874/CLP is dated 30 March 2017.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which an LDC is sought is: "*Certificate of Lawfulness of Proposed Use for permanent residential use of 45 caravans*" [*my emphasis*]. Note: this description has been taken from the face of the Supporting Statement dated March 2017, given that the application form says in almost all relevant instances: "*See accompanying statement*" and I have used it in preference to section E of the appeal form which omits the word "*residential*".
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Formal Decision

1. I take no further action in respect of Appeal A.
2. Appeal B is allowed and attached to this decision is an LDC that describes the proposed use which is considered to be lawful. A plan that identifies the land, edged in red, is attached to the LDC.

Procedural matters

3. The Appellant agreed at the Hearing that I had understood the terms of its email dated 2 November 2017 correctly and I shall proceed accordingly. The Appellant also submitted an email to The Planning Inspectorate [PINS] dated

- 1 February 2018 and the Council replied in an email of the same date to say the comments were too late. I indicated at the Hearing that I had refused to accept the original comments but, for whatever reason, it is unclear whether an email from PINS was sent/received to that effect. I make clear for the reasons given¹ that I have not taken account of the correspondence in substance.
4. Nevertheless it now appears to be common ground, as I put it in opening, that it has never been the Appellant's case that the use has been established or is immune, but rather that the most recent planning permission permits the use². No case has been advanced that "*permanent residential use of 45 caravans*" was subsisting on 19 February 2016, which is the date on which the application subject of Appeal A was submitted. It is not therefore an "*existing use*"³. I have made this point forcibly, including in my original note to the main parties dated 6 March 2017⁴. Nothing I have seen or heard dissuades from the view that Appeal A cannot succeed in the terms in which it was applied for.
 5. For these reasons I shall deal with Appeal B first. The Appellant indicated that there was a "*conditional withdrawal*" of Appeal A in the scenario that Appeal B succeeds. In the alternative scenario that Appeal B fails, the Appellant asks that I determine Appeal A not in the terms applied for, but to establish what lawful use existed on 19 February 2016 by reference to the terms of any extant planning permission[s]. The Act⁵ indicates that an Inspector has the power to modify or substitute the description of the lawful use to which an LDC relates. In this case, given the forensic level of analysis of the relevant planning permissions at the Hearing, I consider that I would be in a position to make the determination sought. Accordingly I shall deal with Appeal A on this basis.
 6. At the Hearing I noted the suggestion that it is "*doubtful*"⁶ whether *I'm Your Man Ltd v SSE* [1998] 4 PLR 107 remains good law. However the Appellant endorsed my view that as an administrative tribunal I am bound by the High Court unless or until such a judgment is explicitly found to have been wrongly decided. At the Hearing the Council agreed *I'm Your Man* was binding. In the circumstances, and having regard to my approach to Appeal A, I am satisfied that there is no reason to cause an Inquiry to dispense with these appeals.
 7. There is an extensive list of documents on the handout, which I circulated to the main parties in advance of the Hearing, but that list identified a number of omissions. These are listed at the end of this decision, together with a number of other documents that were provided by, in particular, Mr Richardson. It was agreed that the "*Matters of common ground*", listed in both of the Appellant's statements, are not agreed. No statement of common ground has been tabled. It was also noted that there is an error in the Council's transcript of 3/78/1132; indeed I believe that there is more than one error and this is considered below.
 8. It was noted in opening that the red line plan submitted with both appeals relates to the original site area, excluding the pedestrian access, discussed

¹ In an email sent to the Case Officer on Thu 01/02/2018 at 13:39 hours I had asked for a reply to be sent on my behalf in the following terms: "I said in my Hearing note: "Apart from this [*clarification of what comprised the Appellant's Hearing statement*], and the possibility of agreeing a statement of common ground, all feedback should be made at the Hearing rather than in advance.". I think this submission falls squarely within what I sought to exclude and so I agree with the Council that it should not be accepted. The points can instead be made at the Hearing". On behalf of PINS I apologise if this email was not sent/received.

² The Appellant agreed that my opening was a brief but fair summary.

³ Source of quote: section 191 (1)(a) of the Act.

⁴ The Hearing was originally scheduled to be heard on 28 March 2017 in relation to just Appeal A but, upon receipt of my note, the Appellant took the hint, asked for a postponement and made the application subject of Appeal B.

⁵ Section 191(4) of the Act, my reading of which is supported by relevant case law.

⁶ Delegated report, paragraph 6.2, at Appendix 5 to the Council's evidence.

further below. However it was agreed that no purpose would be served by revising the plan[s] at this stage and that reference should instead be made to the plan[s] that accompany the 2003 planning permission, detailed below.

Approach to Appeal B

9. The Planning Practice Guidance [hereinafter the Guidance] says: "*The applicant is responsible for providing sufficient information to support an application... In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved*"⁷. It continues: "*In determining an application for a prospective development under section 192 a local planning authority needs to ask 'if this proposed change of use had occurred ... on the application date, would it have been lawful for planning purposes?'*"⁸. This determines my approach to Appeal B.

Appeal B: Background in terms of the planning history

10. Of the 2 planning permissions granted in 1979, one [Ref. 3/78/2351] was for a toilet building and has no bearing on the issue to be determined in this appeal. It was agreed that the second [Ref. 3/78/1132] for "*Use land as a Holiday Caravan and Camping Site for Naturists, (15 caravans, 30 tents), ancillary and exclusive to use of adjoining site by Naturists*", was implemented. Applying the general rule in *R (oao Shepway DC) v Ashford BC* [1998] EWHC Admin 488 I find the permitted description to be clear, unambiguous and valid on its face⁹.
11. Looking at this retrospectively I do however find it instructive to look at the planning application form to interpret the microfiched Woolley & Wallis plan. This is because the description on the application form says "*Proposed use of land as naturist holiday caravan and camping site ancillary and exclusive to existing naturist site edged blue on plan. 15 no. caravans and 30 no. tents*" [*my emphasis*]. At the Hearing it was agreed that the Woolley & Wallis plan is labelled "*Existing club site*" and that the logical inference was that the site to the south was edged blue, but this description dispels any doubt. To be clear, I am not referring to the application form in order to construe the permission, but to understand the markings on the plan which, with the passage of time, has lost its original clarity. I regard that to be a common sense approach.
12. There are 2 conditions that need to be set down¹⁰. The first [No 2] says: "*The development shall be sole [sic] for the purpose described in the application and limited to 15 pitches for caravans and 30 pitches for tents. The permission does not extend to the area indicated for future development on the application plan*". The second [No 7] says: "*All access, vehicular and pedestrian, shall be via the existing drive serving North Lodge and the existing access directly onto Hurn Road shall be permanently stopped off*". Again, typo notwithstanding, I consider that the conditions and reasons, which pertain to [2] landscape value linked to unspecified Structure Plan policies and [7] "*In the interests of road safety*", also meet the general rule in *Ashford*. The other conditions related to: 1) 5-year implementation; 3) management measures of an area of heathland

⁷ Source of quote: paragraph ID: 17c-006-20140306.

⁸ Source of quote: paragraph ID: 17c-009-20140306.

⁹ The Council has referred me to *Ashford* but at the Hearing I did refer to *Barnett v SSCLG & East Hants DC* [2009] EWCA Civ 476, which was concerned with a full planning application rather than the outline at issue in *Ashford*. Plainly neither of the planning permissions at issue in this case were made in outline and so it is necessary to look at the approved plans and drawings to understand, by way of example, the permitted layout.

¹⁰ For 2 reasons: first they are at issue in what was subsequently applied for; second, given the poor quality of the original decision notice and the apparent errors on the transcript, it is necessary to set them out in this decision.

outlined in green; 4) details of fencing; 5) restriction on trees to be felled; and, 6) improvements to Matchams Drive. Thus with the exception of condition 3, which does not relate to the prospective use being permitted, condition 2 was the most relevant condition that sought to control the use of the land.

13. Mr Richardson said that the link between the north site, which was permitted on 4th January 1979, and the south site, which was edged blue and so under the same ownership¹¹ at that time, was severed on either 5 May 1998 or 1999. For my purpose it matters not what the precise date was because it was agreed at the Hearing that the link between the respective sites had been severed by 7 February 2003 when a planning application was made by Mr Richardson in his capacity as a Director of BDOC Ltd¹². The application [Ref. 3/03/0175] sought planning permission for: *"Variation condition 7 and 2 (planning permission 3/78/1132) to allow existing pedestrian access at south end of site, to allow 45 units within site area being caravans or tents"*. This description is substantially the same as what is set out on the notice of decision dated 4 April 2003¹³. There is no dispute that 4 plans accompanied the application¹⁴ or that these are incorporated by reference to *Ashford*, because the face of the decision says the planning permission is granted: *"in accordance with the accompanying plans"*.

What was the nature of the 2003 planning permission?

14. It was agreed at the Hearing that the 2003 planning application was made under section 73 of the Act. When such an application is allowed a new planning permission is created, but the original permission remains extant and unaltered, along with the conditions attached to it. This is confirmed firstly by the Guidance, which says: *"It should be noted that the original permission will continue to exist whatever the outcome of the application under section 73"*¹⁵. Secondly, at the Hearing, I drew attention to the commentary from P73.04 of the *Encyclopedia of Planning Law and Practice*, which says: *"The outcome of a successful application is the grant of a wholly new planning permission, which the applicant is entitled to implement or to ignore"*. When one takes those two quotes together there can be no doubt that this is the position and I reject any claim, as is evident from the Council's final comments, to the contrary.

Was the 2003 planning permission implemented?

15. I hope it is fair to say that there was a consensus at the Hearing that the 2003 planning permission was implemented. Amongst other things the pedestrian access, which is the reason for the *"variation"* sought to condition 7, appears to have been retrospective. Whilst Mr Richardson suggested that the Woolley & Wallis plan might not have been surveyed accurately, I am not convinced that there is any evidence to support that view. The vehicular access to the south site appears to be a constant presence and, on the ground, is a reference point opposite the footpath/gate. If the footpath was proposed to emerge opposite that access originally then that would have been easier to survey and show on the submitted plan. Mr Richardson said he was working blind in 2003, without sight of what had been permitted before, but on the balance of probability it would appear the application was made to regularise the pedestrian access.

¹¹ See Certificate A on the application form that gave rise to the 1979 planning permission.

¹² This is clear from the fact that the application plans all show just the north site edged red. The south site is not edged blue and there is no indication that it is under the Applicant's ownership or control on this date.

¹³ I say substantially because there are slight differences such as shorthand "pp" rather than planning permission.

¹⁴ In the bundle at Appendix 8 to the Council's submission.

¹⁵ Source of quote: paragraph ID: 21a-031-20140306.

16. However the main reason that I conclude that the 2003 planning permission was implemented relates to the second component, namely the number of caravans. First I note in passing the aerial photographs dated 16 May 2002 and 16 April 2003, which were taken before and after the date of the planning permission. My reservation with that evidence is that it is difficult to ascertain whether the objects, to use a neutral term, are tents or caravans. There are more than 15 objects on both photographs. This is not conclusive evidence.
17. This finding is corroborated by Mr Richardson's clear testimony at the Hearing that prior to the grant of planning permission in 2003 there were not more than 15 caravans, but there was a waiting list. Even though this was a Hearing and so I did not take evidence on oath, I have no reason to doubt his evidence that after the planning permission was granted the club allowed extra caravans on. In the circumstances I attach Mr Richardson's oral evidence significant weight. This confirms the Council's own claim at paragraph 26 of its final comments¹⁶.
18. There were 2 sources of evidence that, in advance of the Hearing, led me to suggest that there were conflicting signals. The first was the site licence, which was first issued for 45 units in 2015 [Document 9.5]. However Mr Richardson said at the Hearing that the absence of an up-to-date licence was an oversight and did not reflect the use that was subsisting on the ground. The second was the letter from BDOC dated "04.02.2008". However, as anticipated, the terms of that letter are based on a misunderstanding of the grant of permission; this is confirmed by the terms of the Council's reply [Document 10].
19. In the circumstances, I am satisfied on the balance of probability that the 2003 planning permission was implemented and, as such, there is no need for me to address any alternative scenario that was discussed at the Hearing. The new planning permission [Ref. 3/03/0175] was implemented and superseded the old [Ref. 3/78/1132], including any conditions relating thereto. For this reason I disagree that conditions 2, 3, 4, 5 and 7 of the 1979 planning permission still "subsist"¹⁷, as is claimed in the Council's delegated report. It might be one has to look at the 1979 planning permission in order to understand what the 2003 planning permission granted and I consider this below, but there is a distinction between the respective scenarios. There is no 'zombie' planning permission subsisting that the Council can somehow rely on in order to control the use of the site. My view is confirmed by the Council's concession at the Hearing that there is only one planning permission that governs the use of the land.

What did the 2003 planning permission actually permit?

20. The commentary at P73.04 of the *Encyclopedia of Planning Law and Practice* says section 73: "...only confers power to amend or remove conditions and not to amend any other part of the permission e.g. the description of development". The Guidance also says: "In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application" and "In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission..."¹⁸. Reflecting this view the Appellant said it was not possible to revisit the description of development that was consented. The

¹⁶ Only insofar as it refers to the 2003 changes being applied for: "...because there were more than fifteen (15 no.) BDOC members with touring caravans wishing to use the land".

¹⁷ Source of quote: paragraph 3.15 of the delegated report at Appendix 5 to the Council's submission.

¹⁸ Source of quotes: paragraph ID: 21a-031-20140306.

Council stated that, notwithstanding the description on the face of the 2003 planning permission, one needs to look at the 1979 permission in order to construe the description of what was granted in 2003. In these circumstances this is not a case where one applies the *Ashford* approach because it is agreed that the description has not been amended since the 1979 permission.

21. In light of the above it appears to be common ground that the 2003 planning permission was, at a minimum, to: "*Use land as a Caravan and Camping Site*". However the main parties disagree as to whether planning permission was granted to: "*Use land as a Holiday Caravan and Camping Site for Naturists*". In other words whether "*Holiday*" and "*Naturists*" are limitations on the grant.
22. As the Appellant observes, there are inconsistencies in the Council's approach. The 15 caravans permitted by the 1979 planning permission were controlled by condition 2 of the grant, which the 2003 planning permission sought to remove or vary. So at no stage has the Council relied on that aspect of the description to control the number of caravans. Moreover, noting the commentary in the *Encyclopedia*, the Council's argument that the reference to 15 caravans has gone from the description because of the nature of the 2003 consent tends to reinforce the view that it was never controlling of the development permitted. Condition 2 of either planning permission restricted the number of caravans.
23. It is agreed that the south site was no longer under the control of the Applicant by 2003 and so that component of the 1979 description of what was permitted must be dropped by common consent. There has been no suggestion that the separation of the respective sites, such that the site was no longer "*ancillary and exclusive*" to the south site, would have given rise to a breach of planning control. This element of what was permitted was unenforceable in the absence of a condition on the 1979 planning permission to that effect.

Brief review of case law on limitations on a grant of planning permission

24. In *I'm Your Man Ltd* planning permission had been granted for a particular use of a building for a period of seven years, but no express condition had been imposed requiring the cessation of the use at the expiration of the seven years. It was held that, in the absence of a specific condition, the permission was permanent because the Act does not expressly provide a power to impose limitations on the grant of planning permission pursuant to an application.
25. In reviewing *I'm Your Man Ltd*, the subsequent case of *R (oao Altunkaynak) v Northamptonshire Magistrates' Court* [2012] EWHC 174 (Admin) found that the ratio extended to substantive limitations and was not restricted to temporal limitations. It was held that the relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition; see [39].
26. In *Smout v Welsh Ministers and another* [2011] EWCA Civ 1750, where the planning permission related to a phased development described as A to F, it was found that there was nothing in the planning permission to require the phases to be developed in alphabetical order. The Court held that if a Local Planning Authority desires to impose a restriction or limitation upon development being permitted by the permission in hand, that must be done by means of a condition attached to the planning permission; see [20].
27. In *Cotswold Grange Country Park LLP v SSCLG and Tewkesbury Borough Council* [2014] EWHC 1138 (Admin) it was held that the description of development, which contained a reference to 54 caravans, is not a condition.

The only potentially relevant condition did not restrict the number of caravans, but rather the use of the 54 that had been permitted to holiday purposes, such that there was no limit on the number of caravans that could be sited there. Recounting what had been put for the Claimant, it was said the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use...the only things that are effectively prohibited by a grant of planning permission are those things that are the subject of a condition; see [15].

28. There are a number of other cases where the description of development had a functional significance. The first sequentially, in the material before me, is *Wilson v West Sussex County Council* [1963] 1 All ER 751, where planning permission was given for an “*agricultural cottage*”. The second is *Williamson and Stevens (Executors of Walter Williamson Dec’d) v Cambridgeshire County Council* [1977] 1 EGLR 165, where planning permission was given for the use of land as a site for caravans “*occupied by gipsies*”. The third is *Winchester City Council v SSCLG and others* [2013] EWHC 101 (Admin)¹⁹, where the use permitted was as a “*travelling showpeople’s site*”. In every case it was found that a distinct and narrow use had been granted planning permission.

Are any limitations that exist lawful?

29. The issue to be addressed is whether the other elements, i.e. “*Holiday*” and “*Naturists*”, are lawful limitations that constrain the development permitted.
30. I deal first with the reference to “*Naturists*”. Mr Richardson helpfully confirmed that which appears to be intuitive, namely that when on site BDOC members can and do wear clothes, for example when it is cold. For the Appellant it was said that if, when the lease expires in 2019, the activities on the site continue in the same way but the occupiers were not naturists it could not be said that there would have been a material change in the use of the land. It was said on behalf of the Appellant that I should be slow to introduce any suggestion that the way that someone dresses, or not as the case may be, is relevant to the way that section 55 is to be assessed, because that might provide a basis for discrimination based on a dress code, for example linked to religion; I agree.
31. The instances of functional significance, discussed above, can be distinguished because they have a land use implication. To take the example of showpeople my experience of dealing with such sites is that they have both residential and commercial activities subsisting, sometimes actually within the individual plots. Lorries and equipment are stored but often also maintained. That mix of uses means that it is a sui generis use as it cannot be pigeon holed into a use class.
32. I have been given no reason to doubt that the Land Use Gazetteer also defines a “*Naturist Establishment*” as a sui generis use, but the Appellant said that this publication is of no legal effect. I have not been given any legal authority to support the claim it is a sui generis use. In my view there is no aspect of the use that would lead to a functional distinction being drawn with a conventional caravan site. The reference to “*Naturists*” relates to the user rather than the use of the land. My view in this matter tends to be reinforced by the Council’s concession at the Hearing that this is: “*...not a restriction in its own right*”²⁰.

¹⁹ Later upheld by the Court of Appeal; see [2015] EWCA Civ 563.

²⁰ Source of quote: my contemporaneous note of the Council’s answer during the relevant part of the discussion.

33. So, turning to holiday, this might be said to be a form of temporal occupation. The Council itself claims that it could take enforcement action against a retired couple who chose to spend their time at their caravan²¹. In that sense it is no different from the temporal limitation that was at issue in *I'm Your Man Ltd*. Although the Council has referred to the answer to question 6 of the 2003 planning application form, which says the use of the site at that time was an "existing touring caravan club", and I deal with this further below, I reject any suggestion that this is material to the description of development permitted. Although I am aware of the club rules which, amongst other things, stipulate that the club will be closed from 2nd January to 2nd February each year²², the planning permission contains no such restriction. My role is to interpret the 2003 planning permission rather than the manner in which the current occupier might have used the appeal site over the years.
34. Fundamentally, since the Act does not expressly provide a power to impose limitations on the grant of planning permission pursuant to an application, the fact that the application was effectively volunteering conditions to secure its use for "Holiday" purposes by "Naturists" does not mean that those restrictions can now be enforced. On a literal interpretation of *I'm Your Man Ltd* if there is no power to impose any limitations then the application should succeed on this basis alone, subject to my review of conditions, below. In other words, having ruled out that "Holiday" and "Naturists" are of functional significance, those words merely reflect the terms in which the application was made and are permissive, rather than restrictive, of the lawful use of the site. The land can be used for "Holiday" purposes by "Naturists", but in the absence of a condition there is nothing to stop it being used by others for other purposes within the ambit of the grant to use the land as a "Caravan and Camping Site".

What does condition 2 of the 2003 planning permission mean?

35. There are 4 conditions evident on the face of the 2003 planning permission and the Council confirmed at the Hearing that it does not suggest other conditions should be implied. Having regard to the approach of Mrs Justice Lang DBE in *LB Lambeth v SCLG and others* [2017] EWHC 2412 (Admin) [at 53] and to my finding that there were no other conditions on the 1979 planning permission pertaining to the use permitted, I endorse the Council's finding in this regard²³. In these circumstances, whilst I have noted the Council's reference to *Republic of France v RB Kensington and Chelsea* [2017] EWCA Civ 429, since the point is not in issue I do not propose to examine the judgment further.
36. The first is the standard 5-year implementation condition and conditions 3 and 4 relate to access and were imposed "In the interests of road safety". For these reasons the only possible condition that might be said to control the use of the land²⁴ is No 2, which says: "The development shall be solely for the purpose described in the application and limited to 45 pitches in total for caravans and/or tents". The reason for this condition is: "The site lies within the Green Belt where additional units would be inappropriate". I consider there can be no dispute that this condition imposes an absolute upper limit of 45 caravans and the reason for the condition goes to that numerical limit and not anything else.

²¹ Paragraph 17 of the Council's statement.

²² See rule C8 of the BDOC Members Club Rules, Document 9.7.

²³ It should be noted that I have been provided with a copy of the appeal decision [Ref APP/N5660/X/15/3140961] which was the subject of this challenge and note, amongst other things, its reference to *R (oao Reid) v SSTLGR* [2002] EWHC 2174 (Admin), which is pertinent even if the actual transcript is not before me, particularly as there was reference to that judgment in the Hearing.

²⁴ As opposed to the manner in which access is obtained to the land.

37. In the light of the discussion at the Hearing I am firmly of the view that the "*purpose described in the application*" is that set out in answer to question 3, namely to allow 45 caravans, or tents, within the site²⁵. The express reference to caravans in the condition means, applying the general rule in *Ashford*, that there is no reason to go to the application form more broadly. Even if that might be wrong, because of the way this clause in the condition is worded, I cannot accept that the answer to question 6, "*touring caravan*", overrides or restricts the unqualified reference to "*caravans*" in condition 2. If the Council had wanted to restrict the caravans that could be stationed on the land it could have referred to "*touring caravans*" in condition 2, but it did not and there is no basis for drawing such a conclusion from the reason for its imposition. The fact that the land was used by touring caravans in 2003 does not detract from the terms of the grant permitted in 1979, which refers to "*Caravan*" generically.
38. My view in this matter is confirmed by the various scenarios to which reference was made at the Hearing. If the timescales had been different²⁶ and the 2003 planning application had been made before the 1979 planning permission had been implemented the answer to question 6 "*Please state existing or, if vacant, last use(s) of site*", might have been answered "*agriculture*" or "*nil*". In that, albeit theoretical, scenario it would be ludicrous to read that answer to be the "*purpose described in the application*". This analogy corroborates my view that the answer to question 6 does not inform the purpose of the application.
39. The Council, e.g. at paragraph 26 of its appeal statement, makes the case that it is also appropriate to incorporate reference to the terms of the 1979 planning permission in construing condition 2 of the 2003 planning permission. I cannot agree because of the unambiguous reference in the condition to "*application*", singular. In any event, in the context of the consensus at the Hearing that the description of development has not changed, the Council appeared to retract from that position. It agreed with the Appellant at this stage of the discussion that the terms "*Holiday*" and "*Naturists*" are not caught²⁷ by condition 2.
40. The Council has referred to *Trump International Golf Club Scotland Ltd and another v The Scottish Ministers* [2015] UKSC 74, *Dunnett Investments Ltd v SSCLG and East Dorset District Council* [2016] EWHC 534 (Admin) and *Dunnett Investments Ltd v SSCLG and East Dorset District Council* [2017] EWCA Civ 192. The key passage of relevance to construing condition 2 of the 2003 planning permission is set out in paragraph 37 of the first instance decision in *Dunnett*. I believe that I have construed the condition in a common sense way to give it a sensible meaning, which a reasonable reader would understand, rather than by what the parties may or may not have intended at the time.
41. For these reasons I conclude that the only relevant condition that seeks to control the use of the site is condition 2 of the 2003 planning permission, but it only restricts the number of caravans, which is limited to no more than 45. This reading of the condition is supported by the express terms of the reason for its imposition and, if it was necessary, reference to the answer to question 3 of the application form: "*Description of proposed development*". The "*purpose described in the application*" does not include the use subsisting in 2003, not least because that detracts from the wider terms of the description permitted.

²⁵ The description obviously covers the pedestrian access as well but that has no bearing on the issue before me in terms of the purpose or use of the site as a whole.

²⁶ I acknowledge that this is a theoretical scenario because, in practice, the earlier permission would have lapsed which is why I put it in this way, but I agree that it is a useful exercise that undermines the Council's argument.

²⁷ My contemporaneous note of the Hearing is that in response to the Appellant's assertion to this effect, using this particular word, it was said for the Council that this was agreed and that these terms are solely in the description.

Summary of my reading of the 2003 planning permission

42. I agree with the thrust of the Appellant's case. The Act does not expressly provide a power to impose limitations on the grant of planning permission pursuant to an application. The grant identifies what can be done and in this case that is to use the land as a "Caravan and Camping Site". Simply because something is expressly permitted in the grant, in this instance use for "Holiday" purposes by "Naturists", does not mean that everything else is prohibited. I have given reasons why the only relevant condition, No 2 on the 2003 planning permission, does nothing more than restrict the number of caravans to 45.
43. Accordingly I find the Appellant's claim is made out because there is no lawful limitation and no condition, beyond a numerical restriction. On this basis the Appellant's first contention is that it is unnecessary for me to go on to consider materiality at all. However I am aware that there is a contrary argument. The Council did not²⁸ provide a copy of *Forest of Dean DC v SSE* [1995] JPL 937, but a useful summary is found in *Cotswold Grange Country Park LLP* [at 14]. The last sentence says: "...this case being one of limitation by description of the development, the Inspector was correct to consider whether there had been a material change of use..." [*my emphasis*]. *Forest of Dean* predates *I'm Your Man Ltd*, but I note that Hickinbottom J took a similar line in *Cotswold Grange Country Park LLP* [at 32]²⁹. In these circumstances, notwithstanding my earlier finding, I consider it to be prudent to assess materiality. However I intend to do the exercise on the basis that there is no condition restricting the use of the site, other than the number of caravans which is not at issue, and that the key limitation relates to holiday, for the reasons set out in paragraphs 30-32 above.

Would the proposed use be materially different from that permitted?

44. At the Hearing the Council did not dissent from the Appellant's assertion that the comparison should be between what is proposed and a notional use that has been permitted; I agree. The limited available evidence³⁰ might suggest that the current leaseholder has not used the site to its full extent but that is irrelevant to the comparison to be undertaken as part of this exercise. The Council's reasons for asserting that there would be the making of a material change in the use of the land are set out in paragraph 5.3 of its delegated report and, at the Hearing, the Council read through that part of its report and elaborated upon it to a limited extent. I deal with the points in the order raised.
45. Location: The Council's analysis reads like a planning appraisal dealing with the merits of a full planning application, complete with reference to 4 Development Plan [DP] policies. The Council said at the Hearing that the reference to policy gave a steer as to how it would approach a planning application but, as I made clear at the Hearing, I am not concerned with planning merits. The site is where it is and this would not change. The site is secluded with a perimeter fence³¹ and gates. When entering the site it is surrounded by mature planting. There is nothing in the LDC application that would lead to a finding that this would change. Mr Richardson said that some of the current occupiers go out shopping and eat their meals on the site, but others go out for meals. This would be no different whether by virtue of the site's location or otherwise, but I shall consider the point further in terms of traffic generation in due course.

²⁸ It does rely on it; see list of case law on amended "Appendix 11" [front sheet to Documents 6.1-6.4].

²⁹ As an aside I dealt with the redetermination appeal [APP/G1630/X/13/2191279] and in a decision letter dated 4 December 2014 I undertook the exercise, on behalf of the Secretary of State, that the judge required.

³⁰ See for example paragraph 4.1 of the Council's delegated report and the reference to 38 active pitches in 2017.

³¹ The Hearing was advised that part of the fence has collapsed but the majority remains standing.

46. Visual Amenity: I have given reasons for finding the planning permission is for caravans³² rather than touring caravans and as the Council's arguments under this head are predicated on this false assumption I attach them limited weight. In any event there was no dissent to the view that people can live in tourers year round. Mr Richardson confirmed that caravans on some of the pitches, which are let on a 12-month lease³³, are there all year round. The existing site licence would appear to cover matters such as hard standings and drainage³⁴. There is no reason to find that this would give rise to the making of a material change in the character of the use.
47. Accommodation: I have given reasons for finding that caravans are permitted, rather than being restricted to touring caravans. So although I have noted the photographs of the site at Tall Trees³⁵ and the websites to which the Council has referred [Documents 5.1-5.3], I have been given no reason to dispute the findings of my colleague in paragraph 33 of the Organford decision³⁶ in this respect. My site inspection revealed plots on the appeal site have features such as barbeques, outbuildings, parking areas, outside seating, garden areas or "*pitch territory*"³⁷, and domestic paraphernalia, such as TV aerials. Whilst the Council referred to garages, such structures would need express planning permission and are not proposed as part of this application. There is no basis to find that this factor would give rise to a material change in this respect.
48. Population & Trends: I deal under this heading with all aspects of use³⁸. I have found that the planning permission contains no condition that limits the period when the caravans can be occupied³⁹. I have been given no reason to dispute the findings of my colleague in paragraph 34 of the Organford decision in this respect. Indeed my site inspection suggested that the occupiers of some plots do tend their gardens. So although the Council refers to consumer deliveries I find no reason to conclude that this would be different to how the site operates at present. If someone on holiday is ill they might place a demand on the local doctor or hospital. The point is made under this heading about naturists being a narrow choice of lifestyle but I have addressed this elsewhere and, in any event, Mr Richardson confirmed that clothes are worn sometimes. This is not a reason to find there would be a material change in the character of the use.
49. Infrastructure: I have already noted that the site licence conditions would appear to cover many of the matters raised under this heading, such as hard standings and drainage. To that extent there would appear to be the guarantee that the Council seeks because it would appear to retain control by virtue of the manner in which the licence is framed. This might include the need for planning permission for certain works, as set out in the licence, but none are proposed as part of this application and so I find no basis to conclude that surface water run-off would increase. It was agreed at the Hearing that the alleged reference to "*5-star*" relates to a different site rather than anything on this appeal site.
50. Environmental considerations: No operational development is proposed. In any event I have given reasons why condition 3 of the original permission, which I

³² The statutory definition of caravan applies in construing all permissions relating to caravans.

³³ See rule 15 of the BDOC Members Club Rules, Document 9.7.

³⁴ See Schedule of Conditions at Document 9.4 noting that, in contrast to the sections on ancillary structures and roads, neither of these provisions are qualified by reference to the need to potentially obtain planning permission.

³⁵ Appendix 12 to the Council's statement.

³⁶ Appeal Ref. APP/B1225/X/15/3002181; decision dated 11 September 2015.

³⁷ Source of quote: paragraph 5.3 of the delegated report at Appendix 5 to the Council's statement.

³⁸ The Council has addressed this partly under its title "*Accommodation*", but I shall deal with it holistically here.

³⁹ See point 3 of the Council's letter dated 1 May 2001 [Document 9.3], which says: "*The Site Licence does not control any particular season nor does the original Planning Consent*"; the 2003 permission did not change this.

take to be a reference to the 1979 planning permission, might not subsist. My attention is drawn to the Supplementary Planning Document [SPD] "*The Dorset Heathlands Planning Framework 2015-2020*", paragraph 3.4 of which says "...caravan and touring holiday accommodation" is likely to have the same effect on the heathland as residential development. In this case the club rules permit pets, with no exclusion on cats, and say dogs: "...must be exercised off site"⁴⁰. Accordingly I have been given no reason to disagree with this aspect of the SPD⁴¹. Mr Richardson said that whilst many members use the facilities on the site, some do walk or run in the area, including the heath. Accordingly whilst I have taken account of the representations made by Natural England as well as the Council's reference to a range of case law⁴², this factor is not a reason to find there would be a material change in the character of the use.

51. **Traffic generation:** The Council says that reliance on the car for domestic and holiday living is inevitable; in this location I agree. The strong inference from this part of the delegated report is therefore that the Council sees employment as the key driver of any increase in traffic generation. There is no survey of existing traffic movements and Mr Rowell said such movements are minimal. However I reiterate BDOC are not utilising the site to the extent authorised by the planning permission and so that is not the baseline for the comparison. It is evident from paragraphs 35-37 of the Organford decision, notably 36, that my colleague was provided with a residents' traffic survey. However that was a section 191 appeal whereas I have explained why the comparison in this case is between what is proposed and a notional use that has been permitted, and so it must follow that one cannot have an actual survey to inform the baseline. Instead I find the analysis in paragraph 37 of Organford instructive insofar as it lays a basis for finding that, whilst there might be some increase in trips, the basic scale and character of the trip generation would not materially change.

Other matters relevant to materiality

52. In terms of the effect on the highway network more generally, the Highway Authority has no objection⁴³ and there is no evidence that the proposal would have any off-site effects, for example in terms of highway safety. So whilst I have noted the concerns raised by local residents in this respect, I attach them very little weight given the stance of the statutory consultee.
53. The legal opinion at the end of the delegated report refers to a number of court cases and I deal with those not previously addressed here. The case of *R (oao Childs) v FSS* [2005] EWHC 2368 (Admin) concerned a potential increase from 4 caravans to between 8 and 50 caravans. In contrast to the circumstances of that case, no increase in the number of caravans is proposed in this appeal and I have otherwise considered on-site and off-site effects above.
54. The case of *Richmond upon Thames LBC v SSETR and another* [2001] JPL 84 appears to be relied on because: "*the loss of a particular type of residential accommodation...is a relevant factor*"⁴⁴ in deciding whether there has been a material change of use. The first point is to suggest this does not sit easily with my understanding⁴⁵ of the Council's case that a "*residential*" use has not

⁴⁰ Source of quote: rule 11 of the BDOC Members Club Rules, Document 9.7.

⁴¹ On this basis I accept that planning policy, generically, might have some bearing on materiality.

⁴² Including *Boggis v Waveney DC* [2009] EWCA Civ 1061; *Waddenzee v Government of the Netherlands* [2004] Case C-127/02; and *Peter Sweetman and others v An Bord Pleanala and others* [2013] Case C-258/11.

⁴³ See email dated 24 April 2017 [Document 3.2].

⁴⁴ Source of quote: paragraph 6.1 of the delegated report at Appendix 5 to the Council's statement, noting that emphasis has been added to this part of the quoted passage.

⁴⁵ Paragraph 27 of the Council's final comments say that a residential use: "...is not a current function of the land".

been permitted. The circumstances at issue in that case were that there was a potential loss of a number of flats. Here there might be the loss of the BDOC site but, whilst that is a legitimate planning purpose, the fact is that the lease is due to expire next year. It therefore appears that this is intertwined with civil matters beyond my remit. The lease may or may not be renewed⁴⁶ and there might be a number of considerations that influence that decision. As such, whilst this is a relevant material consideration I attach it limited weight.

Conclusion on materiality

55. Even if I might be wrong to find there is no lawful limitation on the planning permission, for the reasons set out above I conclude that a change of use of the permitted caravan and camping site from holiday use to a permanent residential use would not, on the evidence currently available, amount to the making of a material change in the use of the land. Since no development, as defined in section 55 of the Act, is proposed, Appeal B should succeed.

Other matters

56. In the circumstances, taking the Appellant at his word, I do not propose to determine Appeal A.

57. An LDC is merely declaratory of what, in this case, the Council has permitted. I have given reasons why the proposed use would not constitute the making of a material change in the use of the land. In those circumstances it was agreed that neither a screening opinion nor an appropriate assessment is required.

58. I have noted local residents are concerned about noise, but given my rationale for finding that there would not be a material change in the use of the land, I find no basis to conclude that there would be more noise, e.g. from an increase in traffic movements. Trees on the site are the subject to a Tree Preservation Order [TPO] and that would apply irrespective of the outcome of this appeal.

59. I appreciate that the understanding of Councillor Davies is that the intent was to grant planning permission for a temporary mobile facility. However I have given reasons for finding that the ambit of the planning permission that was granted was much wider because there were no conditions imposed to control the manner in which the site operates, other than a restriction to 45 units. So whilst I have taken account of the representations made by the Parish Council [Document 2] and all matters raised in the other correspondence, there are no material considerations that lead me from the conclusion to which I am drawn.

Conclusion

60. For the above reasons I conclude, on the evidence now available, that the Council's deemed refusal to grant a proposed LDC for permanent residential use of 45 caravans on land on the north side of Matchams Drive, Matchams Drive, Matchams, Hampshire BH24 2BU was not well founded. The appeal will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act. In the circumstances, in the light of the conditional withdrawal set out at the Hearing, I propose to take no further action in Appeal A.

Pete Drew

INSPECTOR

⁴⁶ See paragraph 26 of the Council's final comments that indicate that the lease: "...may not be renewed".

APPEARANCES

FOR THE APPELLANT:

Paul Tucker QC
Matthew Green
Michael Rudd

Instructed by Ruth Reid, GPS Ltd.
Director, GPS Ltd.
Barrister.

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Lucas LLB (Hons)
PG Cert, PG Diploma
Anne James MA, MRTPI
David Lloyd

Non Practising Barrister, Principal Planning
Lawyer, East Dorset District Council.
Principal Planning Officer with the Council.
Enforcement Consultant on behalf of the Council.

INTERESTED PARTIES:

Councillor Alan Davies
Steven Rowell
Peter Richardson

St Leonards & St Ives Parish Council.
Local resident.
Local resident and BDOC member.

DOCUMENTS SUBMITTED AT THE HEARING

Document	1	Statement of Mr Richardson dated 3 February 2018.
Document	2	Statement of Councillor Alan Davies [February 2018].
Documents	3.1-3.5	Bundle of consultation comments submitted in relation to application No 8/17/0874, numbered sequentially, which were provided by the Council at the Hearing.
Documents	4.1-4.5	Bundle of neighbour comments submitted in relation to application No 8/17/0874, numbered sequentially, which were provided by the Council at the Hearing.
Documents	5.1-5.3	Bundle of excerpts from the internet, which were provided by the Council at the Hearing.
Documents	6.1-6.4	Bundle of missing legal authorities, namely <i>R (oao Childs) v FSS</i> [2005], <i>Richmond upon Thames v SSE</i> [2001], <i>Republic of France v RB Kensington and Chelsea</i> [2017] and <i>LB Lambeth v SSCLG</i> [2017], which were provided by the Council at the Hearing. Note: the Council's evidence also referred to, but did not provide, a copy of <i>Forest of Dean DC v SSE</i> [1994].
Document	7	Transcript of <i>East Barnet UDC v British Transport Commission and Another</i> [1962], which was provided by the Appellant at the Hearing.
Documents	8.1-8.3	Bundle of good copies of microfiche documents from application No 3/78/1132, which were provided by the Council at the Hearing.
Documents	9.1-9.8	Bundle of documents provided by Mr Richardson at the Hearing [<i>where 9.1 = 1b, 9.2 = 1c and the rest are as originally numbered, because 1a and 2 were not taken</i>].
Document	10	Letter dated 5 February 2008 from the Council to BDOC Ltd, which was provided by the Appellant at the Hearing.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 30 March 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Act, for the following reasons:

1. The 2003 planning permission was implemented and permitted the use of the land as a caravan and camping site. The Act contains no power to impose limitations on the grant of planning permission pursuant to a planning application. The terms "*Holiday*" and "*Naturists*" are not of functional significance and are permissive, rather than restrictive, of the lawful use. The only relevant condition that controls the use of the land is condition 2 of the 2003 planning permission, but it merely restricts the number of caravans to no more than 45 rather than the use to which those caravans are actually put.
2. Without prejudice to the view that the above reason is a complete answer to the issues raised in this appeal, reasons have been given why a change of use of the permitted caravan and camping site to a permanent residential use would not amount to the making of a material change in the use of the land that would require planning permission.

Signed

Pete Drew

Inspector

Date: 15 February 2018

Appeal B Ref: APP/U1240/X/17/3179428

First Schedule

Certificate of Lawfulness of Proposed Use for permanent residential use of 45 caravans.

Second Schedule

Land on the north side of Matchams Drive, Matchams Drive, Matchams, Hampshire BH24 2BU

NOTES

This certificate is issued solely for the purpose of Section 192 of the Act.

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Local Planning Authority.

The effect of the certificate is subject to the provisions in section 192(4) of the Act, which state that the lawfulness of a specified use is only conclusively presumed where there has been no material change, before the use is instituted, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 February 2018

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Land on the north side of Matchams Drive, Matchams Drive, Matchams,
Hampshire BH24 2BU

Appeal B Ref: APP/U1240/X/17/3179428

Scale: Do not scale as the original plan has been scanned.

